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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~357~~. 80

THE COUNTY OF CHAMBERS, APPELLANT,

vs.

HENRY CLEWS AND THEODORE S. FOWLER, AS HENRY CLEWS & CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED DECEMBER 10, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 357.

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a May term, 1872.

At a district court of the United States for the middle district of Alabama, begun and holden at Montgomery, Alabama, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy-two.

Present: The honorable Richard Busteed, judge of said court.

The court was duly opened at 12 o'clock m., and the following proceedings had, viz:

1 UNITED STATES OF AMERICA:

In the district court of the United States for the middle district of Alabama, May term, 1872.

Henry Clews, who is a citizen of the State of New York, and Theodore S. Fowler, who is a citizen of the State of New York, the two doing business together in the city and State of New York, as partners and as bankers, under the name and style of Henry Clews & Co., complain of the county of Chambers, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Alabama, which said corporation is a citizen of the State of Alabama, and of the district aforesaid, and thereupon said plaintiffs claim of said defendant, which is a corporation duly incorporated and treated as such by the laws of the State of Alabama, the sum of fourteen thousand eight hundred and eighty dollars, being the amount due upon and for three hundred and seventy-two coupons, which were attached to ninety-three of the bonds of said corporation, which said bonds are numbered from fifty-two to one hundred and fifty, both inclusive, each of
2 said bonds being in legal effect and substance as follows:

"UNITED STATES OF AMERICA,
State of Alabama, county of Chambers.

No. ——.] [$1,000.00.

"Twenty-year eight per cent. bond issued in payment of stock of the Eufaula, Opelika, Oxford and Guntersville Railroad.

"Know all men by these presents that the county of Chambers, of the State of Alabama, acknowledges to owe the Eufaula, Opelika, Oxford and Guntersville Railroad Company, or the bearer hereof, one thousand dollars, on the first day of January, A. D. eighteen hundred and ninety, at the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company, in the city of New York, with interest thereon at the rate of eight per centum per annum, payable on the first days of July and January of each year, upon the presentation and surrender of the coupons hereto attached as they severally become due. 1,000 dollars. 1,000 dollars.

"This bond being one of a series of one hundred and fifty bonds, of one thousand dollars each, numbered from one to one hundred and fifty, inclusive, making an aggregate of one hundred and fifty thousand dollars, issued by said county of Chambers under authority and in
3 pursuance of an act of the general assembly of the State of Alabama, entitled 'An act to authorize the several counties, towns, and cities of Alabama, to subscribe to the capital stock of such

railroads throughout the State as they may consider most conducive to their interests.' Approved December 31st, 1868.

(Across the page, on page 2: $1,000.)

"In witness whereof the judge of probate and county treasurer have signed this bond and caused the seal of the court of probate of said county of Chambers to be hereto affixed, this first day of January, A. D. eighteen hundred and seventy.

[SEAL.]

"JOHN APPLEBY,
"*Judge of Probate.*
"JO. GRACE,
"*County Treasurer.*"

Attached to each of said bonds were forty coupons, numbered from one to forty, inclusive, the first coupon on each of said bonds being in substance and legal effect, as follows:

STATE OF ALABAMA, [$40.00.
"*County of Chambers:*

"Forty dollars will be due and payable on the first day of July, 1870, at the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, being six months interest on bond No. —, for $1,000, issued by county of Chambers in payment of subscription to Eufaula, Opelika, Oxford, and Guntersville R. R. Co.

"JO. GRACE, *Treasurer.*"

4 And all the other coupons on said bonds were of the same substance and legal effect, with the exception of the dates of payment thereof, the first coupon on each of said bonds being payable as aforesaid on the first day of July, 1870, and one of said coupons successively falling due semi-annually thereafter, until and up to, and including, the first day of January, 1890. There are now due and unpaid on said ninety-three bonds three hundred and seventy-two coupons, being four coupons due and unpaid on each of said ninety-three bonds, each of said coupons being for forty dollars, and are numbered from one to four, inclusive, on each of said bonds, and which are sued for in this action; ninety-three of said coupons fell due on the first day of July, 1870; ninety-three of said coupons fell due on the first day of January, 1871, ninety-three of said coupons fell due on the 1st day of July, 1871, and ninety-three of said coupons fell due on the 1st day of January, 1872, amounting in the aggregate to fourteen thousand eight hundred and eighty dollars.

Plaintiffs aver that each and every one of said coupons, to wit, said three hundred and seventy-two coupons, above described, together with interest thereon from the respective dates at which they severally fell due, are still due and unpaid. And said plaintiffs further aver that

5 they are the bona fide owners and bearers of said three hundred and seventy-two coupons above described, which, together with the said bonds to which they were attached, were executed and put in circulation, with the other coupons above mentioned, by the said defendant and purchased by the plaintiffs for value before any of them fell due, and that before the commencement of this suit the plaintiffs duly presented each of said three hundred and seventy coupons above described as having fallen due, for payment at the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, which said railroad company is now otherwise known as the East Alabama and Cincinnati Railroad Company, then and there

demanded payment of each of said three hundred and seventy-two coupons above mentioned as having fallen due, after its maturity and before the commencement of this suit, but the defendant failed and refused to pay said coupons or any part thereof, and no part thereof has been paid, of all of which defendant had notice before the commencement of this suit. This suit is brought to recover the amount due on said three hundred and seventy-two coupons (hereinabove described as having fallen due before this suit was commenced) and interest thereon according to their tenor and effect. All of which defendant hath hith-
6 erto and does still wholly fail and refuse to pay, to the damage of plaintiff twenty thousand dollars.

RICE, CHILTON & JONES,
Plaintiff's Att'ys.

I acknowledge myself security for costs at the instance of the plaintiff in the above suit.

E. R. MITCHELL.

UNITED STATES OF AMERICA:

District court of the United States for the middle district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded to summon the county of Chambers, a municipal corporation, existing under and by virtue of the laws of the State of Alabama, who is a citizen of the State of Alabama, to appear before the hon. district court aforesaid, at the place of holding said court, at Montgomery, on the fourth Monday of May next, to answer the complaint of Henry Clews and Theodore S. Fowler, partners and bankers, doing business as such under the name and style of Henry Clews & Co. in the city of New York, both of whom are citizens of the State of New York, and have you then and there this writ.

Witness the Hon. Richard Busteed, judge of the said court, the
7 fourth Monday of November, in the year of our Lord one thousand eight hundred and seventy-one.

Issued the 16th day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Attest:

E. C. V. BLAKE,
Clerk U. S. Dist. Court, Mid. Dist. Ala.

Received in office this 22nd day of April, 1872.

R. W. HEALY,
U. S. Marshal.

Executed by serving copy of the within summons and complaint on Hon. Jno. Appleby, judge of probate for the county of Chambers, this the 4th day of May, 1872.

R. W. HEALY,
U. S. Marshal.
By E. H. OLCOTT,
Spec. Dep'ty.

8 District court of the United States, middle district of Alabama.

HENRY CLEWS & CO., PLAINTIFF,
vs.
THE COUNTY OF CHAMBERS, DEFENDANT.

First. And now comes the defendant by its attorneys, Stone & Clopton, and defends the wrong and injury, &c., and says that the defendant did not undertake or promise, in manner and form as the plaintiffs have above hereof complained against the defendant, and of this defendant *and of this* the *defendant* puts itself upon the country, &c.

Second. And for further plea in this behalf, the defendant says actio non, because, he says that the bonds in the complaint mentioned were issued by the court of county commissioners of said county of Chambers, in payment for a subscription made by said court of county commissioners to the capital stock of the said Eufaula, Opelika, Oxford and Guntersville Railroad Company, and which subscription purported to be made under and by virtue of an act of the general assembly of the State of Alabama, entitled "An act to authorize the several counties and
9 towns and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the State as they may deem most conducive to their interests," approved December 31st, 1868, by the first section of which act it is provided "that any and every county of the State of Alabama, situate upon or adjacent to the main or branch line of the railroads of this State, as such lines are or may be hereafter located by the companies owning and controlling said roads, respectively, is authorized and empowered to subscribe for, take, and pay for the capital stock of such of the railroad companies of this State as they may deem most conducive to their interests, as hereinafter provided. The said railroad companies, by their president and a majority of their directors, may in writing propose to any such county that it shall subscribe for and take an amount of their capital stock, to be named in said proposal, at a certain price per share, and pay for the same in such bonds of the county as shall be set forth in said proposal;" and under and by virtue of no other authority whatever. And the defendant avers further, that the said Eufaula, Opelika, Oxford and Guntersville Railroad Company did not prior to or since the making of said sub-
10 scription to said capital stock and the issue of said bonds in the complaint mentioned, by its president and a majority of its directors, in writing, propose to the said defendant that the said defendant shall subscribe for and take an amount of the capital stock of said railroad company, named in said proposal, at a certain price per share, and pay for the same in such bonds of the said defendant as shall be set forth in said proposal, and that said subscription to said capital stock was made, and said bonds and coupons in the complaint mentioned were issued, without authority of law and are void, and that the plaintiffs are not bona-fide holders thereof without notice, and this the defendant is ready to verify, &c.

STONE & CLOPTON,
Atty's for Def't.

Filed 20th May, 1872.

E. C. V. BLAKE, *Clerk.*

District court of the United States, middle district of Alabama.

HENRY CLEWS & CO., PLAINTIFFS,
vs.
THE COUNTY OF CHAMBERS, DEFENDANT.

Third. And for further plea, in this behalf, defendant says actio non, because, he says that Elisha Trammell and divers other persons,
11 who were at the time of the filing of the bill of complaint hereinafter mentioned, citizens and tax-payers of said county of Chambers, filed in the chancery court for the 5th district of the eastern chancery division of the State of Alabama, against the court of county commissioners of said county of Chambers, and John C. Pennington, George F. Harrington, and others, who were the corporators of the said Eufaula, Opelika, Oxford and Guntersville Railroad Company, in which bill of complaint was involved the validity of the subscription made by said court of county commissioners to the capital stock of said railroad company to the amount of one hundred and fifty thousand dollars, and praying, among other things, that the defendants to said bill of complaint be enjoined from issuing, or proceeding to be issued, bonds in payment of said subscription; and such proceedings were had in said suit, and upon said bill of complaint, as that, at the December term, 1871, of said chancery court, being a regular term, the said chancery court rendered and made a decree perpetually enjoining the defendants to said bill of complaint from issuing said bonds, or procuring the issue thereof; and the defendant avers, further, that the bonds and coupons, in the complaint set forth, were issued in payment of said subscription to the capital stock of said railroad company, and were issued after said bill was filed and whilst the same was pending, and this the
12 defendant is ready to verify, &c.

STONE & CLOPTON,
Att'ys for Def'ts.

Filed 23d May, 1872.

E. C. V. BLAKE, *Clerk.*

United States district court for the middle district of Alabama, sitting at Montgomery.

HENRY CLEWS & CO., PLAINTIFFS,
vs.
THE COUNTY OF CHAMBERS, DEFENDANT.

1. Come the said plaintiffs, and as to the plea by said defendant first above pleaded and which it prayed may be inquired of by the country, the plaintiffs do the like.

2. And the said plaintiffs, as to the said plea of said defendant by it secondly above pleaded, saith that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against it, the said defendant, and that they, the said plaintiffs, are not bound by law to answer the same, and the said plaintiffs, according to the form of the statute in such cases made and provided, state and show
13 to the court the following grounds of demurrer to said second plea, that is to say:

1st. For that second plea fails to deny or tender issue upon the allegation of the complaint to the effect that the plaintiffs were, at and be-

fore the commencement of this suit, the owners and bearers of the said bonds and coupons mentioned in the complaint.

2d. For that the matters stated in said second plea do not constitute a bar to this suit or a defence thereto.

3d. For that said second plea does not allege, aver, or disclose any matters or facts which preclude the plaintiffs from recovering under their said complaint in this suit.

4th. For that said second plea is double and void for duplicity.

5th. For that said second plea discloses and shows that upon a proper application the defendant was authorized to execute and issue said bonds and coupons mentioned in the complaint, and does not deny that the plaintiffs are and were the owners and bearers for value of said bonds and coupons as alleged in said complaint.

6th. For that second plea is not verified by any oath or affidavit whatever.

14 3. And the said plaintiffs as to the said plea of said defendant, by it thirdly above pleaded, saith that the same and the matters therein contained, in manner and form as above pleaded, are not sufficient in law to bar or preclude them from having or maintaining their aforesaid action thereof against said defendant, and that they are not bound by law to answer the same.

And the said plaintiffs, according to the form of the statute in such case made and provided, states and shows here to the court the following grounds of demurrer to said third plea, that is to say:

1st. For that the said third plea does not aver or show that the plaintiffs in this suit were either parties or privies to the said suit in said chancery court mentioned in said third plea, nor does it state or disclose any fact which can make said suit in said chancery court, or any proceedings or decree therein, operate as a defence or bar to this suit.

2d. For that the matters stated in said third plea do not constitute a bar to this suit or a defence thereto.

3d. For that said third plea does not disclose, aver, or allege any matters or facts which preclude the plaintiffs from recovering under their said complaint in this suit.

15 4th. For that the perpetual injunction mentioned in said third plea was decreed not before, but long after the said bonds and coupons mentioned in the complaint had been issued and purchased for value by plaintiffs as alleged in the complaint.

5th. For that said third plea does not deny that the plaintiffs are and were owners and bearers for value of said bonds and coupons, mentioned in the complaint, as alleged in the complaint.

RICE, CHILTON & JONES,
Attorneys for Plaintiffs.

Filed 25th May, 1872.

E. V. C. BLAKE, *Clerk.*

16 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two, I, James Betts Metcalf, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th,

1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office at room No. 1, No. 51 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Henry Clews, to
17 testify and the truth to say on the part and on behalf of the plaintiffs in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the middle district of Alabama, wherein Henry Clews & Company, a firm composed of Henry Clews and Theodore S. Fowler, are plaintiffs, and the county of Chambers, in the State of Alabama, is defendant. And the said Henry Clews being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Henry Clews, and he did thereupon depose, testify, and say as follows, viz:

I reside in the city, county, and State of New York, and am a member of the firm of Henry Clews & Company, who are bankers engaged in business at No. 32 Wall street in said city. My partner in said firm is Theodore S. Fowler, also of New York City. My said firm are the owners and holders of ninety-three bonds, each of the denomination of one thousand dollars, and numbered from fifty-eight to one hundred and fifty, both numbers inclusive, said bonds being issued by and being the bonds of the county of Chambers, in the State of Alabama, and bearing date on the first day of January, 1870, and according to the
18 tenor thereof falling due January 1st, 1890, being payable, with the coupons to each of said bonds annexed, at the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York. The coupons so annexed to each of said bonds are payable at said agency semi-annually, on the first days of July and January in each year. Three hundred and seventy-two coupons, each for forty dollars, annexed to said bonds, are due and wholly unpaid, said coupons having matured as follows: Ninety-three coupons, for $40, each were due July 1st, 1870; ninety-three coupons, for $40, each were due Jan'y 1, 1871; ninety-three coupons, for $40, each were due July 1, 1871; ninety-three coupons, for $40, each were due Jan'y 1, 1872. My said firm of Henry Clews & Co. at the time of receiving said bonds were designated as the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, at which the coupons on said bonds would be paid as fast as said coupons became due, and also the principal of said bonds at the maturity thereof. No funds have ever been deposited with my said firm, either by said county of Chambers, or by said railroad company, or by any other per-
19 son or persons, or corporation whatever, to pay said coupons or any part thereof. After said three hundred and seventy-two coupons became due my said firm were informed that the commission house of Tanner, Walker & McOnerney, of No. 63 Broadway, in said city, were appointed the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company, in the city of New York, and my said firm caused said three hundred and seventy-two coupons, of forty dollars each, then past due and unpaid, to be presented for payment at the counter of said Tanner, Walker & McOnerney, of No. 63 Broadway, in the city of New York, and offered to surrender said past-due three hun-

dred and seventy-two coupons, of forty dollars each, to said last-mentioned firm upon payment of the same, but payment thereof was refused, and said coupons are still unpaid. Said ninety-three bonds of the county of Chambers were received by my said firm in good faith and for value paid, both I and my firm relying upon the good faith and credit of said county of Chambers that said bonds, and the coupons thereto attached, would be paid according to the tenor and effect thereof.

HENRY CLEWS.

20 Subscribed and sworn to before me this 22nd day of May, 1872.

JAMES BETTS METCALF,
United States Commissioner, Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two, I, James Betts Metcalf, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at room No. 1, No. 51 Chambers street, in the city of New York, in the southern district of New York,
21 in the State aforesaid, William M. Burnop, to testify and the truth to say on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the middle district of Alabama, wherein Henry Clews & Company, a firm composed of Henry Clews and Theodore S. Fowler, are plaintiffs, and the county of Chambers, in the State of Alabama, is defendant. And the said William M. Burnop, being about the age of twenty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William M. Burnop, and he did thereupon depose, testify, and say as follows, viz:

I reside in the city, county, and State of New York. On the twenty-third day of March, 1872, the honorable Samuel F. Rice, of Alabama, delivered to me the following described coupons of the bonds of the county of Chambers in the State of Alabama, viz, ninety-three coupons for $40 each, due July 1st, 1870; ninety-three coupons for $40 each, due January 1st, 1871; ninety-three coupons for $40 each, due July 1st, 1871; ninety-three coupons for $40 each, due January 1st, 1872,
22 being in all three hundred and seventy-two coupons, over-due, of forty dollars each, of said bonds of said county of Chambers, which said bonds are numbered from fifty-eight to one hundred and fifty, both inclusive, and instructed me to demand payment of, and to present and offer to surrender each of said past-due coupons at the counter of Messrs. Tanner, Walker and McAnerney, No. 63 Broadway, in the city of New York, and upon being paid the amount of such past-

due coupons to surrender the same to said last-mentioned firm. I thereupon, on the day aforesaid, having the said above-described three hundred and seventy-two past-due coupons in my possession, demanded payment thereof at the counter of Messrs. Tanner, Walker and McAnerney, No. 63 Broadway, in said city, and then and there presented said coupons for such payment, and offered to surrender the same upon being paid the amount thereof, but such payment was refused, because no funds had been remitted to said last-mentioned firm to pay said coupons, and I thereupon returned said coupons, unpaid, to said Samuel F. Rice.

WM. M. BURNOP.

Subscribed and sworn to before me this 22nd day of May, 1872.

23 JAMES BETTS METCALF,

United States Commissioner, Southern District of New York.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, James Betts Metcalf, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they both reside in the city of New York, a place more than one hundred miles distant from the place where said cause will be tried, to wit, the city of Mont-

24 gomery, in the State of Alabama.

I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the adverse party to be present at the taking of the depositions and to put interrogatories if he or they might think fit, inasmuch as neither the adverse party nor its attorney were within one hundred miles of the place of taking such depositions.

I further certify that, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two, I was attended by the counsel for the plaintiffs, Hiram B. Crosby, esq., and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and, after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of depositing the same with my own hand in the U. S. post-office in the city of New

25 York, addressed to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this

twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

[SEAL.] JAMES BETTS METCALF,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Published in open court and filed May 28th, 1872.
E. C. V. BLAKE, *Clerk.*

26 May term, 1872.

In the district court of the United States for the middle district of Alabama.

WEDNESDAY, *May 9th*, 1872.

The court met at 10 o'clock a. m., pursuant to adjournment.
Present, as on yesterday, the Hon. Richard Busteed, judge.

HENRY CLEWS & CO.
vs.
THE COUNTY OF CHAMBERS. } 1792.

This day came the parties, by their attorneys, and thereupon came a jury of twelve good and lawful men, to wit,
and eleven others, who, being duly elected, empannelled, sworn, and charged well and truly to try the issues joined and a true verdict to render according to the evidence, upon their oaths, do say: We, the jury, find all the issues in favor of the plaintiffs, and assess the plaintiffs' damages at fifteen thousand five hundred and sixty $\frac{03}{100}$ dollars. It is, therefore, considered by the court that the plaintiffs recover of the defendant fifteen thousand five hundred and sixty $\frac{03}{100}$ dollars, the damages assessed by the jury as aforesaid, and all the costs incurred or
27 expended in this cause, for all which let execution issue.

RICHARD BUSTEED,
Judge, &c.

28 THE UNITED STATES OF AMERICA, *ss:*

District court of the United States for the middle district of Alabama, May term, 1872.

HENRY CLEWS AND THEODORE S. FOWLER, partners and bankers under the firm-name of Henry Clews & Co.,
vs.
THE COUNTY OF CHAMBERS.

Be it remembered that this case was called for trial on the third day of said term. The defendant filed the plea of the general issue and two special pleas; the said special pleas being numbered second and third respectively, and being the special pleas on file. The plaintiffs joined issue on the plea of the general issue and filed separately and severally a demurrer to each of said two special pleas. The causes of demurrer to said special plea numbered second, being the first special

plea, are the causes assigned in the demurrer to said first special plea on file, which demurrer to said first special plea, numbered second, was sustained by the court, and defendant excepted thereto. The
29 causes of demurrer to said special plea numbered third, being the second special plea, are the causes of demurrer assigned in the demurrer on file, which demurrer to said second special plea was sustained by the court, and defendant excepted thereto. Issue in law had been joined on each of said demurrers.

The parties then went to trial on the plea of the general issue, and a jury was empannelled and sworn to try the issue as joined.

On the trial the plaintiffs offered to read in evidence ninety-three bonds, being the bonds in the complaint mentioned and described and a copy of which in every respect is set out in the complaint, and forty coupons attached to each of said bonds, making three hundred and seventy-two coupons, each of said coupons being for forty dollars and being due before the commencement of this suit, a copy of each coupon being set out in the complaint, except the difference as to the time of payment, and being the same coupons described and mentioned in the complaint. When said bonds and coupons were offered to be read in evidence, the defendant objected thereto, and specified the following grounds of objection, viz: 1st. That there was no evidence that said bonds and coupons were authorized to be issued by the defendant; 2d. There was no evidence that the seal annexed to each of said
30 bonds is or was the seal of said probate judge or of the defendant; and 3d. The neither said bonds nor coupons were stamped with revenue stamps of the United States, as required by the act of Congress. The court overruled said objection and admitted said bonds and coupons to be read in evidence, and defendant excepted thereto. The said bonds and coupons were then read in evidence by the plaintiffs. The plaintiffs then read in evidence the depositions of Henry Clews and William M. Burknop, which depositions are on file and made a part of this bill of exceptions.

The said Henry Clews, in his said deposition, deposed and testified as follows, viz: I reside in the city, county, and State of New York, and am a member of the firm of Henry Clews & Co., who are bankers engaged in business at No. 32 Wall street, in said city; my partner in said firm is Theodore S. Fowler, also of New York City; my said firm are the owners and holders of ninety-three bonds, each of the denomination of one thousand dollars, and numbered from fifty-eight to one hundred and fifty, both numbers inclusive, said bonds being issued by and being the bonds of the county of Chambers, in the State of Alabama, and bearing date on the first day of January, 1870, and, according to the tenor thereof, falling due January 1st, 1890, being payable, with the
31 coupons to each of said bonds annexed, at the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company, in the city of New York; the coupons so annexed to each of said bonds are payable at said agency semi annually, on the first day of July and January in each year; three hundred and seventy-two coupons, each for forty dollars, annexed to said bonds, are due and wholly unpaid, said coupons having matured as follows: Ninety-three coupons, for $40 each, were due July 1st, 1870; ninety-three coupons, for $40 each, were due January 1st, 1871; ninety-three coupons, for $40 each, were due July 1st, 1871; ninety-three coupons, for $40 each, were due January 1st, 1872. My said firm of Henry Clews & Co., at the time of receiving said bonds, were designated as the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, at which

the coupons on said bonds would be paid as fast as said coupons became due, and also the principal of said bonds at the maturity thereof; no funds have ever been deposited with my said firm, either by said county of Chambers, or by said railroad company, or by any other person or persons, or corporation whatever, to pay said coupons or any part thereof; after said three hundred and seventy-two coupons be-
32 came due my said firm were informed that the commission-house of Tanner, Walker and McAnerny, of No. 63 Broadway, in said city, were appointed the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, and my said firm caused the said three hundred and seventy-two coupons of forty dollars each, then past due and unpaid, to be presented for payment at the counter of said Tanner, Walker and McAnerny, at No. 63 Broadway, in the city of New York, and offered to surrender said past-due three hundred and seventy-two coupons of forty dollars each to said last-mentioned firm upon payment of the same, but payment thereof was refused, and said coupons are still unpaid; said ninety-three bonds of the county of Chambers were received by my said firm in good faith, and for value paid, both I and my firm relying upon the good faith and credit of said county of Chambers that said bonds and the coupons thereto attached would be paid according to the tenor and effect thereof.

The said William M. Burnop in his depositions deposed and testified as follows, to wit, I reside in the city, county, and State of New York; on the twenty-third day of March, 1872, the honorable Samuel
34 F. Rice, of Alabama, delivered to me the following described coupons of the bonds of the county of Chambers in the State of Alabama, viz, ninety-three coupons for $40 each, due July 1st, 1870; ninety-three coupons for $40 each, due January 1st, 1871; ninety-three coupons for $40 each, due July 1st, 1871; ninety-three coupons for $40 each, due January 1st, 1872, being in all three hundred and seventy-two coupons, over-due, for forty dollars each, of said bonds of said county of Chambers, which said bonds are numbered from fifty-eight to one hundred and fifty, both inclusive, and instructed me to demand payment of and to present and offer to surrender each of said past-due coupons at the counter of Messrs. Tanner, Walker, and McAnerny, No. 63 Broadway, in the city of New York, and upon being paid the amount of such past-due coupons to surrender the same to said last-mentioned firm. I, therefore, on the day aforesaid, having the said above-described three hundred and seventy-two past-due coupons in my possession, demanded payment thereof at the counter of Messrs. Tanner, Walker, and McAnerny, No. 63 Broadway, in said city, and then and there presented said coupons for such payment, and offered to surrender the same upon being paid the amount thereof, but such payment was refused, because no funds had been remitted to said last-mentioned
35 firm to pay said coupons, and I thereupon returned said coupons, unpaid, to said Samuel F. Rice.

Samuel F. Rice, esq., was then called by the plaintiffs and sworn as a witness, who testified that the said bonds and coupons were delivered to him by the plaintiffs in the city of New York in March, 1872, as their attorney, and that he delivered said coupons to the said witness, William M. Burnop, with directions to present them for payment at the office of Tanner, Walker and McAnerny in the city of New York, which the witness had been informed was the office of said railroad company in the city of New York.

The defendant then offered to read a duly certified transcript from the records of the court of county commissioners of said county of

Chambers in relation to said bonds. The plaintiffs' counsel enquired of the defendant whether this transcript was offered in connection with any other evidence, or whether any other evidence was proposed in connection with said transcript. The defendants answered these questions in the negative. The plaintiffs agreed and admitted that said transcript was duly and properly authenticated, but objected to same being read in evidence on the ground that it was illegal as well as irrelevant testimony.

The said transcript is annexed to this bill of exceptions, and marked Exhibit A, and is made a part of this bill of exceptions, as if the
36 same was copied and incorporated herein. The court sustained said objection, and refused to allow said transcript to be read in evidence, to which ruling and refusal of the court the defendant duly excepted.

John C. Pennington was then called by the defendant and sworn as a witness, who testified that he is now and has been ever since its organization the president of the said Eufaula, Opelika, Oxford and Guntersville Railroad Company named in said bonds; that the said bonds described in the complaint were issued early in 1870, and were obtained by plaintiffs in April, 1870, for value, part of which was paid in cash at the time and part afterwards, as more fully stated hereinafter by this witness. The defendant then propounded to said witness the following question: "What was done towards the organization of said railroad company previously to making application to said county of Chambers for subscription to the capital stock of said company and the issue of said bonds?" The counsel for the plaintiffs objected to said question, and in support of the objection proved by said witness that all the proceedings of said company and of its president and directors were in writing and recorded. The counsel for the defendant stated that the object of the question was to show that there had been
37 no organization of said company, no directors elected or appointed, and no persons who, under the act of the general assembly of Alabama of December 31st, 1868, could make the proposal therein required. The court sustained said objection, and refused to allow any answer to be made to said question, to which ruling and refusal of the court the defendant duly excepted. The defendant then propounded to said witness the questions, "Upon what proposal were the said bonds issued? What were they issued for?" On objection of the counsel of plaintiff and on the same proof made in support of the last preceding objection, the court refused to allow any answer to be made to either of said questions, and to each ruling and refusal of the court the defendant duly excepted. The said witness further testified that he could not be precise as to certain occurrences without reference to the books, but his recollection is that there was but one proposal made to the defendant for subscription to the capital stock of said company and issue of bonds, and that was in writing and left with the probate judge of the said county of Chambers. Thereupon the counsel for the defendant offered to show a paper to said witness and prove by him that it was a correct copy of said proposal. On objection of the counsel of plaintiffs,
38 the court refused to allow said witness as to said paper being a correct copy of said proposal, to which ruling and refusal of the court the defendant duly excepted.

The said witness further testified that the plaintiffs got said bonds in April, 1870, from J. C. Stanton, to whom said bonds had been transferred on account of advances made by said Stanton after the election in said county of Chambers, as to the subscription to the stock of said

the coupons on said bonds would be paid as fast as said coupons became due, and also the principal of said bonds at the maturity thereof; no funds have ever been deposited with my said firm, either by said county of Chambers, or by said railroad company, or by any other person or persons, or corporation whatever, to pay said coupons or any part thereof; after said three hundred and seventy-two coupons be-
32 came due my said firm were informed that the commission-house of Tanner, Walker and McAnerny, of No. 63 Broadway, in said city, were appointed the agency of the Eufaula, Opelika, Oxford and Guntersville Railroad Company in the city of New York, and my said firm caused the said three hundred and seventy-two coupons of forty dollars each, then past due and unpaid, to be presented for payment at the counter of said Tanner, Walker and McAnerny, at No. 63 Broadway, in the city of New York, and offered to surrender said past-due three hundred and seventy-two coupons of forty dollars each to said last-mentioned firm upon payment of the same, but payment thereof was refused, and said coupons are still unpaid; said ninety-three bonds of the county of Chambers were received by my said firm in good faith, and for value paid, both I and my firm relying upon the good faith and credit of said county of Chambers that said bonds and the coupons thereto attached would be paid according to the tenor and effect thereof.

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Chambers in relation to said bonds. The plaintiffs' counsel enquired of the defendant whether this transcript was offered in connection with any other evidence, or whether any other evidence was proposed in connection with said transcript. The defendants answered these questions in the negative. The plaintiffs agreed and admitted that said transcript was duly and properly authenticated, but objected to same being read in evidence on the ground that it was illegal as well as irrelevant testimony.

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37 no organization of said company, no directors elected or appointed, and no persons who, under the act of the general assembly of Alabama of December 31st, 1868, could make the proposal therein required. The court sustained said objection, and refused to allow any answer to be made to said question, to which ruling and refusal of the court the defendant duly excepted. The defendant then propounded to said witness the questions, "Upon what proposal were the said bonds issued? What were they issued for?" On objection of the counsel of plaintiff and on the same proof made in support of the last preceding objection, the court refused to allow any answer to be made to either of said questions, and to each ruling and refusal of the court the defendant duly excepted. The said witness further testified that he could not be precise as to certain occurrences without reference to the books, but his recollection is that there was but one proposal made to the defendant for subscription to the capital stock of said company and issue of bonds, and that was in writing and left with the probate judge of the said county of Chambers. Thereupon the counsel for the defendant offered to show a paper to said witness and prove by him that it was a correct copy of said proposal. On objection of the counsel of plaintiffs,
38 the court refused to allow said witness as to said paper being a correct copy of said proposal, to which ruling and refusal of the court the defendant duly excepted.

The said witness further testified that the plaintiffs got said bonds in April, 1870, from J. C. Stanton, to whom said bonds had been transferred on account of advances made by said Stanton after the election in said county of Chambers, as to the subscription to the stock of said

company, but before the actual issue of said bonds, and on an agreement that said bonds should be transferred when issued. The plaintiffs obtain' said bonds in April, 1870, under advances made at that time and an agreement to make future advances, which they have done to about one hundred thousand dollars, and hold said bonds as collateral security for said advances.

It was admitted that the said court of county commissioners is a court of record.

This was all the evidence adduced on the trial of this cause, and upon the foregoing evidence the court gave the following charge to the jury, to wit: "That under the law and the evidence adduced in this case, the plaintiffs are entitled to recover the amount of the coupons read in evidence with interest from the time of their maturity," to which charge of the court the defendant duly excepted.

39 All the foregoing exceptions were tendered and taken during the progress of the trial and while the jury were at the bar.

And this is presented as the defendant's bill of exceptions, and allowed, and signed and sealed as such by the court, the honorable Richard Busteed presiding and constituting the court, this 10th day of June, 1872.

RICHARD BUSTEED,
Judge, &c.

Exhibit A.

Application of the corporators of the Eufaula, Opelika, Oxford and Guntersville Railroad Company to the commissioner's court of the county of Chambers for a county subscription.

Hon. John Appleby, chairman of board of county commissioners of Chambers County:

SIR: I am directed by the corporators of the Eufaula, Opelika, Oxford and Guntersville Railroad Company to make application to the board of county commissioners of the county of Chambers, as provided in an act to authorize the several counties, towns, and cities of the State of Alabama to subscribe to the capital stock of such railroads throughout the State, as they may consider most conducive to their re-

40 spective interests," approved December 31st, 1868, requesting said county commissioners to order an election for a subscription of one hundred and fifty thousand dollars to the capital stock of said road, as directed in an act of the general assembly of Alabama hereinbefore mentioned. Sec. 2 of said act provides "That upon the application of the president and directors of any of the railroad companies of Alabama to the commissioner's court of any county of the same, submitting proposals for a county subscription to the capital stock of said railroad company, the commissioners' court of said county in which application is made is hereby authorized and required to order an election within sixty days after the meeting of said court, to submit the proposition of said R. R. company to the qualified electors of said county for their acceptance or rejection." See acts 1868, page 514. As will be seen from this section the county commissioners are required to order an election when application is made within sixty days after the meeting of said court, and we would respectfully represent that you order said election to be holden on Saturday, the first day of May, 1869, believing that will give the people of your county sufficient time to canvass, reflect upon, and come to a wise conclusion as to the merits of our application.

41 A true copy of our charter, the original of which is on file in the secretary of state's office at Montgomery, is herewith submitted.

I have the honor to be your obedient servant,

J. L. PENNINGTON,
President.

W. H. SMITH,
W. T. BROWN,
J. J. HINDS,
GEO. F. HARRINGTON,
Directors.

OPELIKA, ALA., *March* 17, 1869.

At a special term of the commissioners' court, begun and held for the county of Chambers, on the 22nd day of March, 1869, present, John Appleby, judge of probate, and James H. Fonnan and George S. Turner, commissioners, the following proceedings were had, to wit:

The corporators of the Eufaula, Opelika, Oxford and Guntersville R. R., having through the president of said road filed their application for a subscription to the capital stock of said road in the sum of one hundred and fifty thousand dollars by Chambers County, in county bonds bearing interest at the rate of six per cent. per annum, payable semi-annually, and running not less than ten nor more than twenty years: Now, in compliance with said petition and the law authorizing the said filing, it is ordered by the court that an election be held at the several election precincts in this county on the first Saturday in
42 May, 1869, for the purpose of determining whether said subscription shall be taken by said county, and that all qualified electors shall at such election vote "subscription," or "no subscription," and that said election shall be held and published as the law directs.

JNO. APPLEBY,
Judge Probate.

J. H. FONNAN,
G. S. TURNER,
Com's'rs.

AUGUST 17, 1869.

The court met pursuant to adjournment—present, John Appleby, judge of probate, James H. Fonnan, G. P. Crowder, W. H. Huguley, and George S. Turner, commissioners—and the following proceedings were had, to wit:

Whereas an application was made in due form and according to law, by the Eufaula, Oxford, Opelika and Guntersville R. R. Company to the said county of Chambers, for said county to subscribe to the capital stock of said railroad, to the amount of one hundred and fifty thousand dollars; said amount to be paid in bonds of said county, having not less than ten nor more than twenty years to run, with interest coupons attached for semi-annual payment at six per cent. per annum, which said application was duly made by said railroad company to the commissioners' court of said county, asking that an election be held in
43 said county for the purpose of ascertaining whether said county should so subscribe to the capital stock of said railroad company; and whereas said election was ordered and held in all things as required by law, the result of which election was announced in favor of said subscription: Now, therefore, on the application of said railroad company, it is ordered by the court of county commissioners of Cham-

bers County, at its regular August term for the year 1869, that the said county of Chambers do hereby subscribe to the capital stock of the said Eufaula, Opelika, Oxford and Guntersville Railroad Company, to the amount of one hundred and fifty thousand dollars, said amount to be paid in the bonds of said county, having not less than ten nor more than twenty years to run, with interest coupons attached, payable semi-annually, at six per cent. per annum, as shall hereafter be determined and ordered by the court of county commissioners of said county.

STATE OF ALABAMA,
Chambers County:

I, John Appleby, judge and ex-officio clerk of probate of Chambers County, do certify that the above and six pages contain a full
44 and correct transcript of the application and proceedings had in regard to the issuance of bonds by Chambers County to the Eufaula, Opelika, Oxford and Guntersville Railroad Company, as appears of record in my office. Given under my hand and seal of said court, this 23d May, 1872.

[PROBATE COURT SEAL.] JNO. APPLEBY,
Judge.

[One dollar, Al'a, tax on seals.]

We, the council and attorneys of the respective parties in the above-entitled cause, agree upon the foregoing bill of exceptions, as corrected in said cause, and that the same may be signed by the presiding judge as such.

STONE & CLOPTON,
Att'y for the Defendant.
RICE, CHILTON & JONES,
Atty's for Pl'ffs.

Filed in office June 10th, 1872.

E. C. V. BLAKE,
Clerk.

45 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court, before you, between Henry Clews and Theodore S. Fowler, partners and bankers under the name and style of Henry Clews & Co., plaintiffs, and the county of Chambers, defendant, a manifest error hath happened, to the great damage of the county of Chambers, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,
46 with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist. Court for Mid. Dist. of Alabama.

(Indorsed:) 1792. Henry Clews & Co. vs. The County of Chambers. Original. Writ of error. Filed in office the 4th day of June, A. D. 1872. Copy of this writ of error filed at the same time. E. C. V. Blake, clerk.

47 THE UNITED STATES OF AMERICA, *ss:*

To Henry Clews and Theodore S. Fowler, partners and bankers under the name and style of Henry Clews & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the middle district of Alabama, wherein the county of Chambers is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this the 4th day of June, in the year of our Lord
48 one thousand eight hundred and seventy-two.

RICHARD BUSTEED, [SEAL.]
Judge, &c.

Executed by serving a copy of the above citation on Samuel F. Rice, the attorney of record of the *the* plaintiff, this 5th day of June, A. D. 1872.

R. W. HEALY,
U. S. Marshal.

Before me, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, personally came R. W. Healy, who, being duly sworn, makes oath that he served a copy of this citation on Samuel F. Rice, an attorney of record of the plaintiff, on the 5th day of June, 1872.

R. W. HEALY,
U. S. Marshal Middle Dist. of Ala.

Sworn to and subscribed before me this 7th day of November, A. D. 1872, at Montgomery.

E. C. V. BLAKE,
Clerk.

(Indorsed:) 1792. Henry Clews & Co. vs. The County of Chambers. Citation. Original. Filed in office 4th day of June, A. D. 1872. Copy of this citation filed at the same time. E. C. V. Blake, clerk.

49 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Elliott C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, do hereby certify that the writings

annexed to this certificate are true copies of their respective originals on file and remaining of record in my office, and the original writ of error and citation, copies of which are on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed at Montgomery, in said district, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-seventh.

[SEAL.] E. C. V. BLAKE, *Clerk.*

(Indorsement on cover:) No. 357. The County of Chambers, appellant, vs. Henry Clews and Theodore S. Fowler, as Henry Clews & Co. M. Alabama D. C. U. S. Filed 10th December, 1872.